

**Kredin Sdn Bhd v YTF Investments Sdn Bhd**

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COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-216  
OF 1996

SHAIK DAUD, ABDUL MALEK AHMAD AND DENIS ONG JJCA  
28 OCTOBER 1997

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*Contract — Assignment — Absolute assignment — Purchaser assigned rights and interest in sale and purchase agreement to bank in consideration of the bank granting a loan to finance the purchase — Whether purchaser's obligation to pay balance of purchase price also passed to the bank*

C

*Civil Procedure — Limitation — Contract — Action seeking declaratory relief — Action filed more than 11 years after termination of sale and purchase agreement — Whether action statute-barred — Whether action barred for undue delay — Discretion of court*

D

*Civil Procedure — Parties — Assignment — Absolute assignment — Purchaser assigned all rights, title and interest in land and sale and purchase agreement and all remedies for enforcing the same to bank — Whether purchaser entitled to commence action in relation to sale and purchase agreement in its own name*

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*Land Law — Restraints on dealings — Caveats — Application for removal of caveat — Purchaser assigned all rights and interest in land to bank — Whether purchaser had caveatable interest*

The respondent, YTF Investments Sdn Bhd ('YTF'), gave an option to purchase three pieces of lands ('the lands') to the appellant, Kredin Sdn Bhd ('Kredin'). On 29 October 1982, the parties entered into a sale and purchase agreement for the lands ('the agreement'). The agreement provided that the balance of the purchase price was to be paid on or before the completion date, ie 30 June 1983. Clause 9 provided that in the event of Kredin failing to pay the balance of the purchase price by the completion date, the agreement shall become null and void.

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Meanwhile, Kredin managed to obtain a loan from DCB Bank Bhd ('the bank'). Upon signing the loan agreement with the bank, Kredin also executed a deed of assignment whereby Kredin agreed to 'to assign absolutely all its rights, title and interest in and to the lands and under the sale and purchase agreement and the full benefit granted thereby and all stipulations therein contained and remedies for enforcing the same'.

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Kredin failed to pay the balance of the purchase price by the completion date. Consequently, on 1 July 1983, YTF notified Kredin that YTF had terminated the sale and purchase agreement.

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On 3 February 1988, Kredin filed a civil suit against YTF ('the first action') alleging that YTF had improperly repudiated the agreement and claimed, inter alia, damages for wrongful termination of the agreement. This action had been struck off for want of prosecution.

A On 1 March 1995, some 11 years after YTF terminated the sale and purchase agreement with Kredin, YTF entered into a sale and purchase agreement with another company to sell the lands. Subsequent to this, Kredin lodged a private caveat against the lands and filed an action against YTF praying for a declaration that the agreement was still subsisting and for an order that the bank, as assignees, complete the sale and have the property transferred to Kredin with a charge by Kredin to the bank. The respondent applied to strike out the appellant's action under O 18 r 19 of the Rules of the High Court 1980 and for the removal of the private caveat lodged by the appellant. The High Court allowed YTF's applications. Kredin appealed.

B Kredin argued that the case ought to be allowed to go to trial because there were a number of triable issues, inter alia, the agreement was not properly terminated as in view of the deed of assignment, the notice of termination was required to be given to the bank and this YTF failed to do. It was also argued that since Kredin's obligation to pay the balance of the purchase price was a right and since the assignment was of rights, title and interest and an absolute assignment, the obligation to pay the balance of the purchase price passed to the bank.

**Held**, dismissing the appeal:

- E (1) By virtue of cl 9 of the agreement, the agreement was automatically terminated by 1 July 1983 when Kredin failed to pay the balance of the purchase price by the completion date. There was no provision anywhere to say that YTF was required to issue notice of termination and forfeiture. Therefore, the agreement was properly terminated on 1 July 1983 and became null and void pursuant to cl 9 thereof (see p 55G-H).
- F (2) There was no merit in the contention that the obligation to pay the balance of the purchase price had passed to the bank. The deed of assignment retained the obligation to pay the balance with Kredin, and the assignment of rights did not carry with it that obligation. Kredin's right to the property was dependent on it discharging its obligation to pay the balance of the purchase price. The right to the property would not materialize unless this burden was discharged. The rights and the obligation were two distinct features. There was in fact nothing in the deed of assignment to show that Kredin's obligation too was assigned to the bank. The deed of assignment was one of the security for the loan, and if it were also to pass on Kredin's obligation, then it would no longer be a security (see p 55B-C).
- G (3) In law, the agreement came to an end on 1 July 1983 when Kredin failed to settle the balance of the purchase price. If there was a cause of action at all, it arose on 1 July 1983. Since the action was filed more than 11 years after the termination, it was statute-barred. Therefore, Kredin had no cause of action against YTF.
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Further, although Kredin's action in essence was seeking declaratory relief, nevertheless such relief could be barred because of undue delay. There had been delay of over 11 years and nowhere had Kredin explained the inaction for the delay (see p 54F-I); *Hj Hussin bin Hj Ali & Ors v Dato' Hj Mohamed bin Yaacob* [1983] 2 MLJ 227 followed.

- (4) As Kredin had waived its right to pursue its interest in the property, its present action was an abuse of the process of the court. Further, although Kredin was seeking a declaratory relief, it was in essence seeking specific performance of the agreement. In the light of its election in the first action claiming damages for wrongful termination of the agreement, it was an abuse of the process of the court for it to subsequently seek specific performance (see p 54I).
- (5) This was a fit and proper case to exercise the court's discretion under O 18 r 19 of the Rules of the High Court 1980, as there were no triable issues disclosed in Kredin's action. In the light of this decision, and as the lodging of the caveat was grounded on Kredin's action, the right to caveat must fall with the action. Kredin had no caveatable interest over the property (see pp 55I and 56B).

#### Obiter:

If at all there was a cause of action to institute the action to enforce the agreement against YTF, it would be the bank who would be entitled to do so, and not Kredin. Clause 1 of the deed of assignment made this clear when together with its rights, title and interest, Kredin also assigned 'all remedies for enforcing' to the bank (see p 55F); *Nouvau Mont Dor (M) Sdn Bhd v Faber Development Sdn Bhd* [1984] 2 MLJ 268 followed.

#### [Bahasa Malaysia summary]

Penentang, YTF Investments Sdn Bhd ('YTF'), telah memberi opsyen untuk membeli tiga bidang tanah ('tanah tersebut') kepada perayu, Kredin Sdn Bhd ('Kredin'). Pada 29 Oktober 1982, pihak-pihak telah mengikat suatu perjanjian jual beli untuk tanah tersebut ('perjanjian tersebut'). Perjanjian tersebut memperuntukkan bahawa baki harga belian haruslah dibayar sebelum atau pada tarikh penyempurnaan, iaitu 30 Jun 1983. Fasal 9 memperuntukkan bahawa sekiranya Kredin gagal membayar baki harga belian pada tarikh penyempurnaan, perjanjian tersebut akan menjadi tak sah dan terbatal.

Sementara itu, Kredin memperoleh suatu pinjaman daripada DCB Bank Bhd ('bank tersebut'). Sewaktu menandatangani perjanjian pinjaman dengan bank tersebut, Kredin juga melaksanakan suatu suratikatan penyerahhkan di mana Kredin bersetuju 'untuk menyerahkan secara mutlak segala hak, hakmilik dan kepentingan dalam dan kepada tanah tersebut dan di bawah perjanjian jual beli

A dan manfaat penuh yang diberikan dan semua syarat yang termaktub di dalamnya dan remedi untuk menguatkuasakan yang sama'.

Kredin gagal membayar baki harga belian pada tarikh penyempurnaan. Berikutnya, pada 1 Julai 1983, YTF memaklumkan kepada Kredin bahawa YTF telah menamatkan perjanjian jual beli itu.

B Pada 3 Februari 1988, Kredin memfailkan suatu guaman sivil terhadap YTF ('tindakan pertama') mengatakan bahawa YTF telah menolak perjanjian tersebut dengan tidak wajar dan menuntut, antara lain, ganti rugi untuk penamatan salah perjanjian tersebut. Tindakan ini telah dibatalkan akibat ketiadaan pendakwaan.

C Pada 1 Mac 1995, kira-kira 11 tahun selepas YTF menamatkan perjanjian jual beli dengan Kredin, YTF mengikat suatu perjanjian jual beli dengan sebuah syarikat lain untuk menjual tanah tersebut. Susulan ini, Kredin mengemukakan kaveat persendirian terhadap tanah tersebut dan memfailkan suatu tindakan terhadap YTF meminta perisytiharan bahawa perjanjian tersebut masih kekal dan untuk suatu perintah bahawa bank tersebut, sebagai pemegang serahhak, menyempurnakan jualan dan memindahmilik harta tersebut kepada Kredin dengan satu gadaian oleh Kredin kepada bank tersebut. Penentang membuat permohonan untuk membatalkan tindakan perayu di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 dan untuk pembatalan kaveat persendirian yang dikemukakan oleh perayu. Mahkamah Tinggi membenarkan permohonan YTF. Kredin merayu.

F Kredin menghujahkan bahawa kes patut dibenarkan untuk perbicaraan kerana terdapat beberapa isu yang boleh dibicarakan, antara lain, perjanjian tersebut tidak ditamatkan dengan betul sebab memandangkan suratikatan penyerahhak, notis penamatan dikehendaki diberikan kepada bank tersebut dan ini gagal dilakukan oleh YTF. Ia juga diujahkan bahawa oleh kerana obligasi Kredin untuk membayar baki harga belian adalah suatu hak dan oleh kerana penyerahhak adalah atas hak, hakmilik dan kepentingan suatu penyerahhak mutlak, obligasi untuk membayar baki harga belian telah mengalih kepada bank tersebut.

**Diputuskan**, menolak rayuan:

- H (1) Disebabkan fasal 9 perjanjian tersebut, perjanjian tersebut telah ditamatkan secara automatik pada 1 Julai 1983 apabila Kredin gagal membayar baki harga belian pada tarikh penyempurnaan. Tiada sebarang peruntukan di mana-mana yang mengatakan bahawa YTF perlu mengeluarkan notis penamatan dan perlucuthakan. Oleh itu, perjanjian tersebut telah ditamatkan dengan wajarnya pada 1 Julai 1983 dan menjadi tak sah dan terbatal menurut fasal 9 (lihat ms 55G-H).
- I (2) Tiada merit dalam hujah bahawa obligasi untuk membayar baki harga belian telah mengalih kepada bank tersebut. Suratikatan

penyerahhakan mengekalkan obligasi untuk membayar baki dengan Kredin, dan penyerahhakan hak tidak membawa obligasi itu. Hak Kredin kepada harta tersebut bergantung kepada Kredin melepaskan obligasi untuk membayar baki harga belian. Hak kepada harta tersebut tidak akan menjadi kenyataan sehingga beban ini dilepaskan. Hak dan obligasi adalah dua ciri yang berbeza. Pada hakikatnya tiada apa-apa dalam suratikatan penyerahhakan bagi menunjukkan bahawa obligasi Kredin juga telah diserahkan kepada bank tersebut. Suratikatan penyerahhakan adalah salah satu daripada cagaran untuk pinjaman itu, dan sekiranya ia juga mengalih obligasi Kredin, maka ia tidak lagi menjadi suatu cagaran (lihat ms 55B-C).

- (3) Dari segi undang-undang, perjanjian tersebut telah tamat pada 1 Julai 1983 apabila Kredin gagal menjelaskan baki harga belian. Andainya terdapat kausa tindakan, ia berbangkit pada 1 Julai 1983. Oleh kerana tindakan difailkan lebih daripada 11 tahun selepas penamatan, ia adalah dihalang oleh statut. Maka, Kredin tidak mempunyai kausa tindakan terhadap YTF.

Selanjutnya, walaupun tindakan Kredin pada dasarnya meminta relief perisytiharan, namun relief begitu boleh terhalang disebabkan kelewatan tak wajar. Terdapat kelewatan selama lebih 11 tahun dan Kredin tidak pun menjelaskan ketidakgiatan untuk kelewatan (lihat ms 54F-I); *Hj Hussin bin Hj Ali & Ors v Dato' Hj Mohamed bin Yaacob* [1983] 2 MLJ 227 diikuti.

- (4) Oleh kerana Kredin telah mengenyepikan haknya untuk menuntut kepentingan dalam harta tersebut, tindakan ini adalah satu penyalahgunaan proses mahkamah. Selanjutnya, walaupun Kredin memohon relief perisytiharan, ia sebenarnya memohon pelaksanaan spesifik perjanjian tersebut. Memandangkan pilihannya dalam tindakan pertama menuntut ganti rugi untuk penamatan salah perjanjian tersebut, adalah satu penyalahgunaan proses mahkamah untuk memohon pelaksanaan spesifik berikutnya (lihat ms 54I).

- (5) Ini merupakan suatu kes yang wajar di mana budi bicara mahkamah di bawah A 18 k 19 Kaedah-Keedah Mahkamah Tinggi 1980 boleh dilaksanakan, kerana tiada isu yang boleh dibicarakan didedahkan dalam tindakan Kredin. Memandangkan keputusan ini, dan oleh kerana pengemukakan kaveat adalah berasaskan tindakan Kredin, hak untuk mengkaveat mestilah gagal bersama tindakan itu. Kredin tidak mempunyai sebarang kepentingan boleh kaveat atas harta tersebut (lihat ms 55I dan 56B).

#### Obiter:

Andainya terdapat kausa tindakan bagi memulakan tindakan untuk menguatkuasakan perjanjian tersebut terhadap YTF, hanya bank tersebut berhak berbuat demikian, dan bukannya Kredin. Fasal 1 suratikatan penyerahhakan menyatakan ini dengan jelas apabila Kredin

- A bersama dengan hak, hakmilik dan kepentingannya telah juga menyerahhak 'segala remedi untuk menguatkuasa' kepada bank tersebut (lihat ms 55F); *Nouvau Mont Dor (M) Sdn Bhd v Faber Development Sdn Bhd* [1984] 2 MLJ 268 diikut. ]

### Notes

- B For cases on assignment, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1153–1174.  
For cases on limitation governing contracts, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1812–1813.  
C For cases on parties, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2362–2498.  
For cases on caveats, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2241–2419.

### Cases referred to

- D *Hj Hussin bin Hj Ali & Ors v Dato' Hj Mohamed bin Yaacob* [1983] 2 MLJ 227 (folld)  
*Nouvau Mont Dor (M) Sdn Bhd v Faber Development Sdn Bhd* [1984] 2 MLJ 268 (folld)

### Legislation referred to

- E National Land Code 1965  
Rules of the High Court 1980 O 18 r 19

**Appeal from:** Suit No S3–22–178 of 1995 (High Court, Kuala Lumpur)

- F *KS Narayanan and Vasdev Bakshari (Jayaraman Ong & Co)* for the appellant.  
*Porres Royan and John Mathew (Shook Lin & Bok)* for the respondent.

G *Cur Adv Vult*

**Shaik Daud JCA** (delivering the judgment of the court): This is an appeal from the decision of the Kuala Lumpur High Court which had on 13 March 1996 allowed two applications filed by the respondent. One was to strike out the appellant's action under O 18 r 19 of the Rules of the High Court 1980 and the other for the removal of a private caveat lodged by the appellant against three pieces of lands belonging to the respondent. Both the applications being inter related were heard together, and similarly the appeal.

- I The essential facts leading to the present appeals before us are that the respondent, YTF Investments Sdn Bhd ('YTF'), gave an option dated 29 October 1982 to purchase three pieces of lands to the appellant, Kredin Sdn Bhd ('Kredin'). The purchase price was RM47.5m. Consideration for the option was a separate sum of RM5.1m, of which RM300,000 was to be paid in advance and RM4.1m on execution of the option. The parties

thereafter entered into a sale and purchase agreement for the said lands for the said sum of RM47.5m. The agreement was dated 29 October 1982.

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In the meantime, Kredin managed to obtain a loan of RM15.7m from DCB Bank Bhd ('the bank') to enable it to finance the payment it had to make for the option. Although the option to Kredin was executed by YTF on 29 October 1982 with the acknowledgment that RM300,000 had been paid and received, Kredin in fact paid the RM300,000 to YTF on 9 October 1982.

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The bank approved Kredin's loan of RM15.7m on 28 October 1982 of which RM1m was for the initial payments for the property and RM5.7m was for redeeming a piece of land in Klang belonging to UMS Industries Sdn Bhd which the bank needed as part security for the loan to Kredin. The other security was an assignment dated 29 October 1982 by Kredin to the bank whereby Kredin agreed 'to assign absolutely all its rights, title and interest in and to the said lands and under the sale and purchase agreement and the full benefit granted thereby and all stipulations therein contained and remedies for enforcing the same'. As an added security, two named persons gave their personal guarantees.

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On 29 October 1982, the bank's solicitors forwarded to YTF's solicitors the sum of RM10m which the bank had approved as a loan to Kredin. What was due to YTF then was RM9.8m, made up of RM4.8m for the consideration for the option of RM5.1m (RM300,000 having already been paid by Kredin) and RM5m as initial payment on deposit towards the purchase price of the property.

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On 29 October 1982, YTF signed the option letter to Kredin and acknowledged receipt of RM5.1m as consideration for the option (ie RM300,000 plus RM4.8m). YTF stipulated that no part of the RM5.1m was refundable in any event.

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Kredin exercised the option on the same day by entering into a sale and purchase agreement with YTF. The agreement provides that the purchase price of the property shall be RM47.5m and that a deposit of RM5m had been paid by Kredin. The agreement provides that the balance of the purchase price of RM42.5m was to be paid on or before the completion date which by cl 2 was to be 30 June 1983. Clause 15 provides that time shall be of the essence. Clause 9 categorically provides that in the event of Kredin failing to pay the balance of the purchase price by the completion date, then the deposit of RM5m shall be forfeited to YTF as agreed liquidated damages and thereupon the sale and purchase agreement shall become null and void and YTF shall be entitled to deal with the property as they deem fit. Clause 16 binds the agreement with the parties' successors in title and assigns.

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As mentioned earlier, upon signing the loan agreement with the bank on 29 October 1982, Kredin also executed a deed of assignment to the bank which assignment was to secure the term loan of RM15.7m. YTF was in fact notified of this assignment. Clause 4 of the deed provides that on Kredin paying the balance of the purchase price of the property to YTF

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- A and on getting a transfer of the property to Kredin, Kredin at its own expense shall execute a charge of the property to the bank. It seems clear from this that the assignment to the bank was in fact an interim measure to secure the term loan until such time as a legal charge under the National Land Code 1965 could be executed to replace it. At this stage, it is clear
- B that Kredin is in no position to create a charge over the property until after it became the registered proprietor of the property. It can only become the registered proprietor after paying the balance of the purchase price. It also seems clear that in spite of the deed of a assignment, the burden to pay the balance of the purchase price still lies on Kredin. By cl 1 of the deed of assignment, Kredin in fact assigned to the bank all its rights, title and
- C interest as beneficial owner of the property. By cl 2, it seems clear that Kredin's obligation to pay the balance of the purchase price was never assigned. There is no evidence whatsoever as to how Kredin intended to pay the balance of the purchase price.

- D Kredin in fact failed to pay the balance of the purchase price by the completion date and this has not been disputed. Consequently, on 1 July 1983, the solicitors for YTF notified the solicitors for Kredin that since the balance of the purchase price was not paid, YTF had terminated the sale and purchase agreement and accordingly forfeited the deposit of RM5m. By this time, Kredin was left with a loss of RM11.1m and on top of which was saddled with a loan of RM15.7m with the bank. Interestingly enough,
- E and in spite of the predicament that they were then in, there was no response whatsoever from Kredin to the letter of 1 July 1983. In the light of the arguments being now put forward by Kredin on the termination of the agreement by YTF, we would have expected Kredin to immediately respond to the letter of 1 July 1983.

- F Be that as it may, some four over years later on 3 February 1988, Kredin suddenly responded by filing a civil suit vide Civil Suit No S6-23-62-1988 against YTF and three others. In the suit, Kredin alleged that YTF had improperly repudiated the agreement and claimed recovery of RM10.3m said to have been paid to YTF plus interest, indemnity for consequential losses and damages. This action has since been struck off for
- G want of prosecution on 17 August 1995.

- H On 1 March 1995, some 11 years after YTF terminated the sale and purchase agreement with Kredin, YTF entered into a sale and purchase agreement with another company to sell the same land for RM82.4m. Subsequent to this, Kredin lodged the private caveat and filed the present action. The caveat was lodged on 17 May 1995 and the present action was filed on 22 May 1995.

- I Kredin's principal prayer in the action is for a declaration that the sale and purchase agreement is still subsisting and for an order that the bank, as assignees, complete the sale and have the property transferred to Kredin with a charge by Kredin to the bank. It also prays that if the bank fails to do so, Kredin wants to be freed from the assignment and be given the opportunity to complete the sale. As to when the sale is to be completed is not made clear.

By the previous action, it now seems clear that Kredin was no longer pursuing the property as in the earlier action. Kredin was merely claiming damages for YTF's alleged repudiation of the agreement.

It is the contention of Mr Narayanan of counsel for Kredin, that this is not such a straightforward case to have it struck off because, he contends that, there are a number of triable issues and the case ought to be allowed to go to trial. He contends that on the facts of the case, the issue of whether Kredin as the assignor validly and properly assigned to the assignee bank a right to complete the purchase of the subject property ought to be determined. He also contends that the sale and purchase agreement was not properly terminated as in view of the deed of assignment, the notice of termination was required to be given to the bank and this YTF failed to do. It is surprising that such a contention is only put forth over 11 years after the date of completion and after the termination of the agreement. In the light of the provisions of the sale and purchase agreement, we hold that no notice of termination of the sale and purchase agreement need ever be given to anyone. This fact cannot be made more clear than cl 9 of the sale and purchase agreement. The sale and purchase agreement is automatically terminated by 1 July 1983 when Kredin failed to pay the balance of the purchase price by the completion date, ie 30 June 1983. There is no provision anywhere to say that YTF is required to issue notice of termination and forfeiture. It is our view that YTF was being over cautious when it gave the 1 July 1983 notice to Kredin. The central issue is whether the sale and purchase agreement has in law come to an end, or is it still subsisting. We hold that in law the agreement came to an end on 1 July 1983 when Kredin failed to settle the balance of the purchase price. If there is a cause of action at all, it arose on 1 July 1983. We agree with the contention of Mr Royan of counsel for YTF that since the action was filed more than 11 years after the termination, it is statute-barred. Although Kredin's action in essence is seeking declaratory relief, nevertheless such relief can be barred because of undue delay. In *Hj Hussin bin Hj Ali & Ors v Dato' Hj Mohamed bin Yaacob* [1983] 2 MLJ 227, an action for declaratory reliefs filed over three years after the cause of action arose, the Federal Court held (at p 232):

Now the granting of a declaratory judgment is a matter purely at the discretion of the court. We do not think that the circumstances surrounding the present appeals would justify our exercising this discretion in favour of the appellants, where there has been, in one view, unreasonable vacillation and delay.

In the present case too, there has been delay of over 11 years and nowhere has the appellant explained their inaction for the delay. Although Kredin is seeking a declaratory relief, it is in essence seeking specific performance of the agreement. Now in the light of their election in the previous action (ie Civil Suit No S6-23-62-1988) claiming damages for wrongful termination of the sale and purchase agreement, we hold that it is an abuse of the process of the court for them now to seek specific performance.

A On the contention of Mr Narayanan that since Kredin's obligation to pay the balance of the purchase price was a right and since the assignment was of rights, title and interest and an absolute assignment, the obligation to pay the balance of the purchase price passed to the bank, we find no merit in this contention. We agree with the learned judge's reasoning that the deed of assignment retained the obligation to pay the balance with Kredin, and that the assignment of rights did not carry with it that obligation. Kredin's right to the property was dependent on it discharging its obligation to pay the balance of the purchase price. The right to the property would not materialize unless this burden was discharged. We hold that the rights and the obligation are two distinct features. There is in fact nothing in the deed of assignment to show that Kredin's obligation too was assigned to the bank. Since the deed of assignment was one of the security for the loan, and if it were also to pass on Kredin's obligation, then it would no longer be a security.

D Mr Royan for YTF finally raises another issue which merits consideration. He questions as to whether Kredin is entitled, in the first place, to bring this action in its own name. He queried that since Kredin contends that the assignment was absolute and this is borne out by cl 1 of the deed of assignment, can Kredin, then, bring this action. Under the assignment, Kredin has assigned all its rights, title and interest in the lands and the sale and purchase agreement 'and all remedies for enforcing the same'. Accordingly, he argued that, if there is merit in Kredin's contention (which he denied), only the bank would be entitled to commence any action in relation to the sale and purchase agreement against YTF.

F Based on the Federal Court's decision in *Nouvau Mont Dor (M) Sdn Bhd v Faber Development Sdn Bhd* [1984] 2 MLJ 268, it is our view that, if at all, there is a cause of action to institute the action to enforce the sale and purchase agreement against YTF, it would be the bank who would be entitled to do so, and not Kredin. Clause 1 of the deed of assignment makes this clear when together with its rights, title and interest, Kredin also assigned 'all remedies for enforcing' to the bank.

G After having given careful consideration to all the issues raised by both learned counsel and after perusal of the records of appeal, we are unanimously of the view that the learned judge was justified in exercising his discretion to strike out Kredin's action against YTF. We find firstly, that the sale and purchase agreement was properly terminated on 1 July 1983 as Kredin failed to meet its obligation to settle the balance of the purchase price by the completion date. The said agreement, therefore, became null and void, pursuant to cl 9 thereof. Secondly, we also find that the action is statute-barred having been filed 11 years after the purported cause of action arose. In the light of this, Kredin has, therefore, no cause of action against YTF. We are also unanimously in agreement with the learned judge's finding that, Kredin having waived its right to pursue its interest in the property, its present action is an abuse of the process of the court. We find that this is a fit and proper case to exercise the court's discretion under O 18 r 19 of the Rules of the High Court 1980, as there are no triable issues disclosed in Kredin's action.

We, therefore, dismiss the appeal in Civil Appeal No W-02-216-1996 with costs. We order the deposit to go to the respondent to account of costs.

In the light of this decision, and as the lodging of the caveat was grounded on Kredin's action, the right to caveat must fall with the action. Kredin has no caveatable interest over the property. We also dismiss the appeal in Civil Appeal No W-02-215-1996 with costs and similarly order the deposit to go to the respondent to account of costs.

*Appeal dismissed.*

Reported by Jafisah Jaafar.

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